

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** October 23, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** Irene D. Ramirez, P.E., Assistant City Engineer (X4428)

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Discussion and action on a Resolution authorizing the City Manager to sign a tax-exempt lease-purchase agreement with Motorola Solutions, Inc. in a principal amount not to exceed \$20,063,362.00 to acquire, purchase, finance and lease certain equipment for the project known as the 800MHZ Project 25 Radio System Upgrade and Expansion for the City of El Paso. It is also requested that the City Manager of the City of El Paso be authorized to execute any and all necessary documents relating to this lease-purchase agreement, which are necessary to carry out the intent of this agreement.

**BACKGROUND / DISCUSSION:**

This project consists of the Upgrade and Expansion of the 800MHz P25 Radio System to provide interoperability capabilities with the Rio Grande Region first responders' agencies. The upgrade and expansion of the 800MHz system builds on the foundation the City implemented in 2008 with the UASI/PSIC funded ASTRO25 system. This project will also accommodate the transition from City Hall while keeping all users operational.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Purchase/Installation \$20,063,362.00  
Annual Payments \$2,255,714.49  
Interest Over 10 Years \$2,493,782.90  
Total Project Cost over 10 years \$22,557,144.90

\$20,063,362.00. Funding source: General Fund – Fire, Sun Metro and Airport Departments through a 10-year Master Lease Agreement between the City and Motorola

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

## RESOLUTION

A RESOLUTION OF THE CITY OF EL PASO, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT WITH RESPECT TO CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT IN CONNECTION THEREWITH; RESOLVING OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of El Paso, Texas (the "City"), a body corporate and politic existing under the laws of the State of Texas, is authorized by the laws of the State of Texas (including Section 271.005 of the Texas Local Government Code) to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the City desires to purchase, acquire and lease certain equipment constituting personal property necessary for the City to perform essential governmental functions (the "Equipment"); and

WHEREAS, in order to acquire such equipment, the City proposes to enter into that certain Master Equipment Lease-Purchase Agreement and related lease and associated schedules (collectively, the "Agreement") with Motorola Solutions, Inc. (or one of its affiliates) (the "Lessor"), attached hereto as **Exhibit A** and incorporated herein by reference, and that certain Escrow Agreement (the "Escrow Agreement") with the Lessor and The Bank of New York Mellon Trust Company, N.A., as escrow agent, attached hereto as **Exhibit B** and incorporated herein by reference; and,

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the Escrow Agreement for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

~~SECTION 1. Determination of Essential Use. The City Council of the City hereby finds~~  
and determines that a true and very real need exists for the acquisition of the Equipment and that it is essential to the operation of the City and in the best interests of the City to move forward with transactions contemplated by the Agreement.

SECTION 2. Approval of Documents. The form, terms and provisions of the Agreement and the Escrow Agreement are hereby approved in substantially the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, with such insertions, omissions and changes as shall be approved by the City Manager of the City, the execution of such documents being conclusive evidence of such approval; and the City Manager of the City is hereby authorized and directed to execute, and the City Clerk of the City is hereby authorized and directed to attest and countersign, the Agreement, the Escrow Agreement and any related Exhibits attached thereto and

countersign, the Agreement, the Escrow Agreement and any related Exhibits attached thereto and to deliver the Agreement and the Escrow Agreement (including Exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents.

SECTION 3. Other Actions Authorized. The Chief Financial Officer of the City, the City Comptroller and other officers and employees of the City are hereby authorized to take all action necessary or reasonably required by the parties to the Agreement and the Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of any acceptance certificates, statement of essential use, tax compliance agreement, certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Escrow Agreement.

SECTION 4. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the City subject to annual appropriation as provided in the Agreement.

SECTION 5. Appointment of Authorized City Representatives. The City Manager, the Chief Financial Officer of the City, the Comptroller of the City and the City's Treasury Services Coordinator are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement and the Escrow Agreement.

SECTION 6. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. Incorporation of Findings and Determinations. The findings and determinations of the City Council of the City contained in the preamble hereof are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

SECTION 8. Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this

Resolution, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

SECTION 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

*[Remainder of Page Intentionally Left Blank]*

ADOPTED this \_\_\_\_ day of October, 2012.

CITY OF EL PASO, TEXAS, as lessee

\_\_\_\_\_  
John F. Cook  
Mayor, City of El Paso, Texas

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk, City of El Paso, Texas

(SEAL)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
*Bertha A. Ontiveros*

Bertha A. Ontiveros  
Assistant City Attorney  
City of El Paso

\_\_\_\_\_  
*Carmen Arrieta-Candelaria*

Carmen Arrieta-Candelaria  
Chief Financial Officer  
City of El Paso, Texas

\_\_\_\_\_  
*Paul A. Braden*

Paul A. Braden  
Attorney for the City

**EXHIBIT A**  
**MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT**

*(See attachment.)*

Exhibit A

**MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Lease Number: 23351**

**LESSEE:**

**CITY OF EL PASO**  
2 Civic Center Plaza  
El Paso TX 79901

**LESSOR:**

Motorola Solutions, Inc.  
1303 E. Algonquin Rd.  
Schaumburg, IL 60196

This Master Equipment Lease-Purchase Agreement (the "Master Agreement") sets forth the terms and conditions pursuant to which Lessee may, from time to time during the term hereof, lease from Lessor certain equipment, associated installation cost and City's outside legal fees as may be described in any Schedule A now or hereafter attached hereto (the "Equipment"), which together with a Lease Payment Schedule B, shall constitute a "Schedule." Items of equipment may be added to the Equipment from time to time by the parties' execution of additional Schedules as provided herein. The terms and conditions of the Master Agreement, including all exhibits attached hereto, and as same may be amended from time to time, are incorporated by reference into each Schedule, and each such Schedule shall constitute a separate and independent lease and installment purchase of the Equipment therein described (each, a "Lease").

**1. TERM.** This Master Agreement will become effective upon the execution hereof by Lessor. The "Commencement Date" for any Lease is the date upon which interest commences to accrue under such Lease, which date shall be the earlier of (a) date on which the Equipment listed in such Lease is accepted by Lessee in the manner described herein, or (b) the date on which sufficient funds to purchase the Equipment listed in such Lease are deposited for that purpose with an escrow agent. The term of each Lease will commence on the Commencement Date and unless (i) terminated according to terms hereof or (ii) Lessee exercises the purchase option provided in Section 19, such Lease will continue until the Expiration Date set forth therein (the "Lease Term"). The "Term" for this Master Agreement means the period from the date hereof until terminated in accordance with the terms hereof.

**2. LEASE PAYMENTS.** Lessee agrees to pay to Lessor or its Assignee (as defined in Section 4) the Lease Payments (herein so called), including the interest portion, in the amounts specified in each Lease. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its Assignee may from time to time designate in writing), and will commence on the first Lease Payment Date and thereafter on each of the Lease Payment Dates set forth in such Lease. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date until paid. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds will be made available sufficient to make all Lease Payments when due during the Lease Term. It is Lessee's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

**3. DELIVERY AND ACCEPTANCE.** Lessor will cause the Equipment to be delivered to Lessee at the location specified in each Lease ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form attached hereto as Schedule C. Notwithstanding the foregoing, if Lessee fails to execute and deliver a Delivery and Acceptance Certificate as provided herein, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within ten (10) business days of Lessor's request) whether or not the Equipment has been delivered and is operational. If Lessee fails to so respond within such ten (10) business day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate.

**4. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.** Lessee acknowledges that the Equipment leased pursuant to each Lease is being manufactured and installed by Motorola Solutions, Inc. as vendor ("Vendor") pursuant to the [NAME OF CONTRACT] executed by Vendor and Lessee contemporaneously with any Lease (the "Contract"). Lessee acknowledges that on or prior to the date of acceptance of the Equipment,

Lessor intends to sell and assign Lessor's right, title and interest in and to each Lease and the Equipment identified therein to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY. Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Vendor. Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

**5. NON-APPROPRIATION OF FUNDS.** Notwithstanding anything contained in this Master Agreement to the contrary, Lessee is obligated only to pay such Lease Payments or other amounts due under any Lease as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal period, and shall be subject to Lessee's annual appropriations of funds for the Equipment procured under such Lease by Lessee's governing body. Lessee's obligation to make Lease Payments shall not constitute a pledge of Lessee's full faith and credit within the meaning of any constitutional debt limitation. If sufficient funds have not been appropriated by Lessee to support continuation of a Lease during any subsequent fiscal period, such Lease shall terminate absolutely and without any further obligation on Lessee's part whatsoever. Lessee shall give Lessor notice of such termination at least 60 days prior to the end of the then current fiscal period. In the event the funds appropriated by Lessee's governing body in any fiscal period of Lessee for Lease Payments or other amounts due under any Lease are insufficient therefor, such Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Notwithstanding the foregoing, Lessee agrees, to the extent not prohibited by law, that it will not cancel this Lease under the provisions of this Section if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment.

**6. LESSEE'S REPRESENTATIONS AND WARRANTIES.** Lessee represents, warrants and covenants on the date hereof and as of the Commencement Date of each Lease that: (a) Lessee is a state or a duly constituted political subdivision or agency of the state where the Equipment is to be located; (b) the execution, delivery and performance by the Lessee of this Master Agreement and of each Lease have been duly authorized by all necessary action on the part of the Lessee; (c) each Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (d) Lessee will comply with the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"), and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (e) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term, except that other state and local government entities may use or operate the Equipment in their official capacity as public safety providers; (f) Lessee will do or cause to be done all things necessary to preserve and keep the Master Agreement and each Lease in full force and effect, subject to Section 5 hereof, (g) Lessee has complied with all applicable local, state and federal laws including without limitation laws regarding open meetings and public bidding, and by due notification presented this Master Agreement and each Lease for approval and adoption as a valid obligation on its part, and (h) Lessee has sufficient appropriations or other funds available to pay all amounts due under each Lease for the current fiscal period.

**7. TAX AND ARBITRAGE REPRESENTATIONS.** Lessee further represents on the date hereof and as of the Commencement Date of each Lease as follows: (a) the estimated total costs of the Equipment listed in each Lease will not be less than the total principal portion of the Lease Payments set forth in such Lease; (b) no proceeds of any Lease will be used to reimburse Lessee for expenditures made more than 60 days prior to the Commencement Date thereof or, if earlier, more than 60 days prior to any official action taken to evidence an intent to finance; (c) with regard to any Lease, Lessee has not created or established, and does not expect to create or establish, any sinking fund or similar fund (i) that is reasonably expected to be used to pay the Lease Payments, or (ii) that may be used solely to prevent a default in the payment of the Lease Payments; (d) the Equipment listed in



each Lease has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in part, prior to the last maturity of Lease Payments thereunder; (e) the interest portion of the Lease Payments shall be excludable from Lessor's gross income, for federal income tax purposes, pursuant to Section 103 of the Code; (f) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Agreement or any Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (g) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Agreement or any Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (h) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payments under any Lease to be or become includible in Lessor's gross income for Federal income taxation purposes under the Code and (i) the Equipment listed in each Lease has been ordered or is expected to be ordered within six (6) months of the Commencement Date of such Lease, and all amounts deposited in escrow to pay for the Equipment, together with interest earnings, will be expended on costs of the Equipment and the financing within three (3) years of the Commencement Date of such Lease.

Lessee acknowledges that any breach by Lessee of the covenants contained in Section 6 or this Section 7 of this Master Agreement may cause the interest component of Lease Payments to become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 12 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 7 shall be payable solely from legally available funds.

**8. TITLE TO EQUIPMENT; SECURITY INTEREST.** It is Lessor's and Lessee's intention that each Lease entered into pursuant to this Master Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes. Upon delivery of the Equipment to Lessee under each Lease, title to the Equipment will vest in Lessee, subject to the rights of Lessor under such Lease; provided, however, that (a) in the event of non-appropriation by Lessee pursuant to Section 5 hereof; (b) upon the occurrence of an Event of Default (as hereinafter defined), and as long as such Event of Default is continuing; or (c) in the event that the purchase option provided in Section 19 has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee. In order to secure all of its obligations hereunder and to the extent allowed by applicable law, Lessee hereby (x) grants to Lessor a first priority security interest in any and all right, title and interest of Lessee in: (i) the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; and (ii) moneys and investments held from time to time in any escrow, acquisition or similar fund, including proceeds therefrom, established under any escrow agreement entered into by the Lessee and Lessor with respect to a Lease; (y) agrees that each Lease may be filed as a financing statement evidencing such security interest; and (z) agrees to execute and deliver all financing statements, certificates of title and other instruments reasonably requested by Lessor or its Assignee to evidence such security interest.

**9. USE; REPAIRS.** Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies and regulations relating thereto, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish all parts, mechanisms and devices required therefor.

**10. ALTERATIONS.** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

**11. LOCATION; INSPECTION.** The Equipment will not be removed from the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld; provided that any items of Equipment that are intended by design to be a mobile piece of technology or are installed in motor vehicles may be moved within the continental U.S. without consent, but the permanent base will remain the Equipment Location. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

**12. LIENS AND TAXES.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under each Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase,

possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand as an addition to the Lease Payments.

**13. RISK OF LOSS: DAMAGE; DESTRUCTION.** Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment, nor defects therein, nor unfitness or obsolescence thereof, shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Master Agreement and each Lease. In the event of damage to any item of Equipment under a Lease, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor will either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease Payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B to such Lease.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment under a Lease, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B to such Lease) to be made by Lessee with respect to that portion of the Equipment which has suffered such loss or damage.

**14. INSURANCE.** Lessee will, at its expense, maintain at all times during each Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment subject to such Lease in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required shall be as set forth in Schedule B of each Lease. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assignees as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

**15. INDEMNIFICATION.** LESSEE SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, ACTIONS, PROCEEDINGS, EXPENSES, DAMAGES OR LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS, ARISING IN CONNECTION WITH THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, ITS SELECTION, PURCHASE, DELIVERY, POSSESSION, USE, OPERATION, REJECTION, OR RETURN AND THE RECOVERY OF CLAIMS UNDER INSURANCE POLICIES THEREON.

**16. ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not (a) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Master Agreement, any Lease, the Equipment or any interest in such Lease or the Equipment or; (b) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees unless authorized under Section 6 (e) of this Master Agreement. Lessor may freely assign its rights, title and interest in and to this Master Agreement, any Lease, the Equipment and any documents executed with respect thereto, and/or grant or assign a security interest therein, without Lessee's consent. Any such Assignees shall have all of the rights of Lessor under this Master Agreement and any such Lease. Subject to the foregoing, this Master Agreement and each Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

No assignment or reassignment of any Lessor's right, title or interest in this Master Agreement, any Lease or the Equipment subject to such Lease shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such Assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During each Lease Term, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder.

No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign any Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

**17. EVENT OF DEFAULT.** As used herein, the term "Event of Default" means the occurrence of any one or more of the following events: (a) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of any Lease, and any such failure continues for ten (10) days after the due date thereof; (b) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or under any Lease, and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (c) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Master Agreement, any Lease or in any writing ever delivered by Lessee pursuant hereto or thereto or in connection herewith or therewith is false, misleading or erroneous in any material respect; (d) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (e) an attachment, levy or execution is levied upon or against the Equipment under any Lease.

**18. REMEDIES.** With regard to any Lease, upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies to the extent allowed by law: (a) by written notice to Lessee, declare all amounts then due under such Lease, and all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (b) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly return the Equipment subject to such Lease to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (c) sell or lease the Equipment subject to such Lease or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee thereunder; and (d) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of such Lease or to recover damages for the breach of such Lease or to rescind such Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Master Agreement, and each Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

**19. PURCHASE OPTION.** With regard to any Lease, upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event which with notice or lapse of time, or both, could become an Event of Default then exists, Lessee will have the right to purchase the Equipment subject to such Lease on the Lease Payment dates set forth in Schedule B to such Lease by paying to Lessor the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment subject to such Lease to Lessee "AS IS", WITHOUT WARRANTY, express or implied, except that such Equipment shall be free and clear of any liens created by Lessor.

**20. NOTICES.** All notices to be given under this Master Agreement and each Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

**21. SECTION HEADINGS.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Master Agreement.

**22. GOVERNING LAW.** This Master Agreement and each Lease shall be construed in accordance with, and governed by the laws of, the state of Texas notwithstanding any choice of law principle that might dictate a different governing law..

**23. DELIVERY OF RELATED DOCUMENTS.** Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Master Agreement and each Lease.

**24. ENTIRE AGREEMENT; WAIVER.** This Master Agreement and each Lease, together with the Delivery and Acceptance Certificate, each schedule and exhibit attached hereto and to each Lease, and other documents or instruments executed by Lessee and Lessor in connection herewith, are incorporated herein by reference and made a part hereof. This Master Agreement and each Lease constitutes the entire agreement between the parties with respect to the Lease of the Equipment described in each Lease, and shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Master Agreement or any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Master Agreement and such Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition of this Master Agreement or any Lease shall not operate as a waiver of any subsequent breach hereof or thereof, or as a waiver of the breach of any other Lease.

**25. EXECUTION IN COUNTERPARTS.** This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument; provided, however, that only one counterpart of each Lease (including the terms and conditions of this Master Agreement incorporated therein by reference) shall constitute the original for such Lease for purposes of the sale or transfer of such Lease as chattel paper.

**26. CONDITIONS TO LESSOR'S PERFORMANCE.** This Agreement is not a commitment by Lessor to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion. Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Lessee understands that Lessor requires certain documentation and information necessary to enter into any Lease and Lessee agrees to provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location, documentation or information concerning the financial status of Lessee, and other matters related to Lessee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**LESSEE:**

**CITY OF EL PASO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSOR:**

**MOTOROLA SOLUTIONS, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## OPINION OF COUNSEL

With respect to that certain Master Equipment Lease-Purchase Agreement dated \_\_\_\_\_ by and between Motorola Solutions, Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal period of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law.

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Attorney for CITY OF EL PASO

**SCHEDULE A  
EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Schedule A  
Lease Number:**

**23351**

This Lease dated as of \_\_\_\_\_ is being executed by MOTOROLA SOLUTIONS, INC. ("Lessor") and **CITY OF EL PASO** (Lessee"), as a supplement to, and is hereby attached to and made a part of that certain Master Equipment Lease-Purchase Agreement Number **23351** dated as of \_\_\_\_\_ ("Master Agreement"), between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of equipment, together with funds deposited into the Acquisition Fund (as that term is defined in that certain Escrow Agreement, dated as of \_\_\_\_\_, 2012, by and among Lessor, Lessee, and The Bank of New York Mellon Trust Company, N.A., as escrow agent) for the purpose of acquiring the equipment (collectively, the "Equipment").

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List as per Equipment List dated October 15, 2012, The Pricing/Lease Sheet dated October 4, 2012 and the Proposal dated October 13, 2012
Equipment Location:	City of El Paso Communications Facilities 200 N. Kansas, 911 Raynor, El Paso Texas

**Initial Term: 118 Months**

**Commencement Date: 11/1/2012**

**First Payment Due Date: 9/1/2013**

**10 Annual Payments of \$2,255,714.49** as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

EXECUTED as of the date first herein set forth.

**LESSEE:**

**LESSOR:**

**City of El Paso**

**Motorola Solutions, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## City of El Paso (Schedule B)

Compound Period .....: Annual

Nominal Annual Rate ... : 2.260 %  
 Effective Annual Rate .. : 2.260 %  
 Periodic Rate ..... : 2.2600 %  
 Daily Rate ..... : 0.00619 %

## CASH FLOW DATA

Event	Start Date	Amount	Number	Period	End Date
1 Loan	11/01/2012	20,063,362.00	1		
2 Payment	09/01/2013	2,255,714.49	10	Annual	09/01/2022

## AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 11/01/2012				20,063,362.00
2012 Totals	0.00	0.00	0.00	
1 09/01/2013	2,255,714.49	377,652.94	1,878,061.55	18,185,300.45
2013 Totals	2,255,714.49	377,652.94	1,878,061.55	
2 09/01/2014	2,255,714.49	410,987.79	1,844,726.70	16,340,573.75
2014 Totals	2,255,714.49	410,987.79	1,844,726.70	
3 09/01/2015	2,255,714.49	369,296.97	1,886,417.52	14,454,156.23
2015 Totals	2,255,714.49	369,296.97	1,886,417.52	
4 09/01/2016	2,255,714.49	326,663.93	1,929,050.56	12,525,105.67
2016 Totals	2,255,714.49	326,663.93	1,929,050.56	
5 09/01/2017	2,255,714.49	283,067.39	1,972,647.10	10,552,458.57
2017 Totals	2,255,714.49	283,067.39	1,972,647.10	
6 09/01/2018	2,255,714.49	238,485.56	2,017,228.93	8,535,229.64
2018 Totals	2,255,714.49	238,485.56	2,017,228.93	
7 09/01/2019	2,255,714.49	192,896.19	2,062,818.30	6,472,411.34
2019 Totals	2,255,714.49	192,896.19	2,062,818.30	
8 09/01/2020	2,255,714.49	146,276.50	2,109,437.99	4,362,973.35
2020 Totals	2,255,714.49	146,276.50	2,109,437.99	
9 09/01/2021	2,255,714.49	98,603.20	2,157,111.29	2,205,862.06
2021 Totals	2,255,714.49	98,603.20	2,157,111.29	
10 09/01/2022	2,255,714.49	49,852.43	2,205,862.06	0.00
2022 Totals	2,255,714.49	49,852.43	2,205,862.06	

## City of El Paso (Schedule B)

Date	Payment	Interest	Principal	Balance
Grand Totals	22,557,144.90	2,493,782.90	20,063,362.00	

INITIAL INSURANCE REQUIREMENT: \$20,063,362.00

Except as specifically provided in Section 5 of the Master Agreement hereof, Lessee agrees to pay to Lessor or its Assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

LESSEE:

CITY OF EL PASO

LESSOR:

Motorola Solutions, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**CERTIFICATE OF INCUMBENCY**

I, \_\_\_\_\_ do hereby certify that I am the duly elected or  
(Signature of Secretary/Clerk )  
appointed and acting Secretary or Clerk of the **CITY OF EL PASO** , an entity duly organized and existing under the laws  
of the **State of Texas** that I have custody of the records of such entity, and that, as of the date hereof, the individuals  
named below are the duly elected or appointed officers of such entity holding offices set forth opposite of their respective  
names. I further certify that (i) the signatures set opposite their respective names and titles are their true and authentic  
signatures and (ii) such officers have the authority on behalf of such entity to enter into that certain Master Equipment  
Lease Purchase Agreement number **23351** dated \_\_\_\_\_, and Lease Schedule A number **23351** dated \_\_\_\_\_,  
between **CITY OF EL PASO** and Motorola Solutions, Inc..

**Name**

**Title**

**Signature**

\_\_\_\_\_  
(Individual who signed Lease documents should be listed here and sign where applicable)

**IN WITNESS WHEREOF**, I have executed this certificate and affixed the seal of **CITY OF EL PASO** , hereto this \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_  
(Signature of Secretary/Clerk)

**SEAL**

**EVIDENCE OF INSURANCE**

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Lease Schedule A number **23351** dated \_\_\_\_\_ to that certain Master Equipment Lease Purchase Agreement number **23351** dated \_\_\_\_\_ will be maintained by the **CITY OF EL PASO** as stated in the Master Equipment Lease Purchase Agreement.

This insurance shall name MOTOROLA SOLUTIONS, INC. or its Assignee as additional insured and loss payee for the term of the Schedule A number **23351** dated \_\_\_\_\_.

This insurance is provided by:

\_\_\_\_\_  
Name of insurance provider

\_\_\_\_\_  
Address of insurance provider

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Phone number of insurance provider

In accordance with the Equipment Lease Purchase Agreement Number **23351**, **CITY OF EL PASO**, hereby certifies that following coverage are or will be in full force and effect:

Type	Amount	Date	Effective Date	Expiration	Policy Number
Fire and Extended Coverage	_____	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____	_____

**Lessee:**

**CITY OF EL PASO**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

### STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, please address the following questions by completing this form or by sending a separate letter:

1. What is the specific use of the equipment?
2. Why is the equipment essential to the operation of **CITY OF EL PASO**?
3. Does the equipment replace existing equipment?  
If so, why is the replacement being made?

4. Is there a specific cost justification for the new equipment?  
If yes, please attach outline of justification.

5. What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

Lessee: **CITY OF EL PASO**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

### EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of Lease Schedule A to the Master Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Master Equipment Lease Purchase Agreement Date: \_\_\_\_\_

Lease Schedule A Date: \_\_\_\_\_

Master Equipment Lease Purchase Agreement No.: 23351 Lease Schedule A No. : 23351

### EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in Lease Schedule A# 23351 dated _____. See Schedule A for a detailed Equipment List.

LESSEE:

CITY OF EL PASO

By: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE RESOLUTION- City to provide resolution, therefore, this form can be omitted**

At a duly called meeting of the Governing Body of the Lessee (as defined in the Master Equipment Lease Purchase Agreement) held on \_\_\_\_\_, 20\_\_ the following resolution was introduced and adopted.

BE IT RESOLVED by the Governing Board of Lessee as follows:

1. **Determination of Need.** The Governing Body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease Schedule dated as of \_\_\_\_\_, 20\_\_, between **CITY OF EL PASO** (Lessee) and Motorola Solutions, Inc. (Lessor) and subject to the Master Equipment Lease Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ between Lessee and Lessor.
2. **Approval and Authorization.** The Governing body of Lessee has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lessee for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.

Authorized Individual(s): \_\_\_\_\_  
**Printed or typed name(s) and title(s) of Individual(s) authorized to execute the Lease Agreement.**

3. **Adoption of Resolution.** The signatures below from the designated individuals for the Governing Body of the Lessee evidence the adoption by the Governing Body of this Resolution.

**Signature:** \_\_\_\_\_

**Attested By:** \_\_\_\_\_

**Name and Title :** \_\_\_\_\_

**Name and Title:** \_\_\_\_\_

## **CERTIFICATE AS TO TAX EXEMPTION**

The undersigned, being the duly chosen and qualified Chief Financial Officer of the City of El Paso, Texas (the "*Issuer*"), hereby certifies with respect to the Master Equipment Lease-Purchase Agreement, dated October \_\_, 2012 (the "*Master Lease*") with Motorola Solutions, Inc., a Delaware corporation (the "*Lessor*"), and Schedule A issued thereunder ("*Schedule A*"), and together with the Master Lease, the "*Obligation*"), in the principal amount of \$20,063,362, as follows.

### **A. General.**

1. I, along with other officers of the Issuer, am charged with the responsibility for entering into the Obligation. Terms used and not defined herein have the same meaning given to them in the Obligation.

2. This certificate is made pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended to the date hereof (the "*Code*"), and Treasury Regulations promulgated thereunder (the "*Regulations*").

3. This certificate is based on the facts and estimates described herein in existence on this date, which is the date of delivery of the Obligation to the Lessor, and, on the basis of such facts and estimates, the Issuer expects that the future events described herein will occur.

### **B. Purpose and Size.**

1. The Obligation is being entered into pursuant to a resolution adopted by the Issuer on October 23, 2012 (hereinafter referred to as the "*Resolution*") for the purpose of providing the funds to acquire and/or finance the equipment described in Schedule A to the Master Lease (the "*Equipment*"). The Issuer intends that the transactions contemplated by the Obligation will constitute, for federal income tax purposes, a borrowing by the Issuer from the Lessor. Under the Obligation, the Issuer is obligated to repay the borrowing by making payments to the Lessor of Lease Payments (as defined in the Obligation), consisting of a principal component and an interest component, on the dates and in the amounts set forth in the Obligation. The interest component of the Obligation will begin to accrue on the date hereof.

2. No portion of the amounts borrowed by the Issuer under the Obligation will be used as a substitute for other funds that otherwise were to be used as a source of financing for the Equipment.

3. The Obligation is not a "private activity bond" as that term is defined in section 141(a) of the Code.

4. The amounts received from the Obligation, when added to the amounts expected to be received from the investment thereof, do not exceed the amounts required to pay the costs of the Equipment and of entering into the Obligation.

5. The Equipment will be owned, operated, and maintained by the Issuer. The Issuer has not contracted with any person or entity to operate, maintain or manage the Equipment, or any part thereof, for and on behalf of the Issuer. The Issuer does not expect to enter into any contract for the operation, maintenance or management of the Equipment or any part thereof.

6. There is not, and as of the date hereof the Issuer does not anticipate entering into, any lease, contract or other understanding or arrangement, such as a take-or-pay contract or output contract, with any person other than a state or local governmental unit pursuant to which the Issuer expects that proceeds of the Obligation, or the equipment financed therewith, will be used in the trade or business of such person (including all activities of such persons who are not individuals).

7. No receipts from the sale of the Obligation or the amounts received from the investment thereof will be used to pay the principal of or interest on any currently outstanding issue of bonds or other obligations of the Issuer other than the Obligation.

**C. Temporary Period for Equipment.**

1. Within six months from the date hereof, the Issuer will have incurred binding obligations or commitments to third parties for the Equipment in the amount of at least 5% of the net proceeds of the Obligation.

2. After entering into said contracts, acquisition and installation of the Equipment and the allocation of net proceeds of the Obligation to expenditures will proceed with due diligence.

3. The Issuer expects that all of the net proceeds of the Obligation will be spent within three years from the date hereof, and that any investment proceeds of the Obligation will be spent within one year from the date of receipt.

4. Approximately \$\_\_\_\_\_ of the proceeds of the Obligation will be used to reimburse the Issuer for Equipment expenditures made by it from its own funds prior to the date hereof. With respect to such reimbursement, if any, the Issuer adopted an official intent for the original expenditures (except possibly for "preliminary expenditures" as defined in section 1.150-2(f)(2) of the Regulations) not later than 60 days after payment of the original expenditures, and a copy of the Issuer's official intent is attached to this Certificate As To Tax Exemption. Except for expenditures meeting the preliminary expenditures exception set forth in section 1.150-2(f)(2) of the Regulations, the Obligation is being issued and the reimbursement allocation is hereby being made not later than 18 months after the later of (i) the date the original expenditures were paid, or (ii) the date the Equipment is placed in service or abandoned, but in no event more than 3 years after the original expenditures were paid. The original expenditures were capital expenditures, and in connection with this allocation, the Issuer has not employed any abusive arbitrage device under section 1.148-10 of the Regulations to avoid the arbitrage restrictions or to avoid restrictions under section 142 through 147 of the Code.

**D. Source and Disbursement of Funds.**

1. The Obligation is being issued and delivered to the Lessor on the date hereof upon payment of the agreed purchase price.

2. The Obligation provides that the Lessor shall deposit \$20,063,362 into escrow to be credited to the equipment acquisition fund (the "*Equipment Acquisition Fund*") created by the Escrow Agreement to be utilized to pay for the Equipment as provided therein. It is presently expected that all such funds initially credited to the Acquisition Fund shall be disbursed to pay for the Equipment within one year of the date hereof, but any such amounts ultimately determined not to be needed for such purposes and the interest earnings on the amounts held in escrow shall be utilized to pay part of the principal or interest due under the Lease, as provided in the Lease and the Escrow Agreement.

3. Costs of issuance relating to the Obligation are \$20,000 and will be paid from Obligation proceeds and the remaining proceeds of the Obligation will be allocated by the Issuer to costs of the Equipment. The Issuer estimates that no income and profit will be received from the investment of proceeds of the Obligation pending the disbursement of such amount for the governmental purposes for which the Obligation is being delivered.

4. No receipts from the proceeds of the Obligation or the amounts received from the investment thereof will be used to pay the principal of or interest on any presently outstanding issue of bonds or other similar obligations of the Issuer.

**E. Obligation Not Hedge Bonds**

1. The Issuer expects to expend within three years from the date hereof an amount of proceeds of the Obligation equal to not less than 85% of the net sales proceeds of the Obligation.

2. No proceeds of the Obligation will be invested in investments which have a substantially guaranteed yield for four years or more.

**F. Yield and Nonpurpose Investments.**

1. No other obligations of the Issuer which are reasonably expected to be paid from the same source of funds as the Obligation were sold within 15 days from the date the Obligation was delivered.

2. The Obligation bears interest at the rate of 2.26% per annum.

3. The Issuer acknowledges that the Yield on the Obligation is \_\_\_\_% and that the weighted average maturity of the Obligation is \_\_\_\_ years and that such weighted average maturity is less than 120% of the average reasonably expected economic life of the Equipment.

4. Except as otherwise provided in section 148(f) of the Code, the Issuer will account for proceeds of the Obligation separately from other funds of the Issuer and will compute and pay to the United States Treasury the rebate amount due with respect to the Obligation to the place, in the manner and amount and accompanied by such forms or other



information as is or may be required by Section 148(f) of the Code and the regulations and rulings thereunder.

**G. Interest and Sinking Fund.**

1. The Issuer has agreed to annually appropriate funds to pay principal and interest on the Obligation as they become due, and such funds have been pledged to the payment of the Obligation.

2. The Issuer has not established and does not expect to establish any sinking fund, debt service fund, redemption fund, reserve fund, replacement fund, or similar fund to be used to pay, directly or indirectly, principal or interest on the Obligation. The Issuer has not pledged or otherwise restricted and does not expect to pledge or restrict any other funds or property (other than the Equipment) which as a result of the pledge or restriction could be reasonably assured to be available to pay, directly or indirectly, principal or interest on the Obligation, even if the Issuer encounters financial difficulty.

**H. No Abusive Arbitrage Device.**

1. In connection with the issuance of the Obligation, the Issuer has not employed any action which has the effect of overburdening the market for tax-exempt obligations by issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is reasonably necessary to accomplish the governmental purposes of the Obligation.

2. In connection with entering into the Obligation, the Issuer has not employed any action which has the effect of enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage.

**I. Written Procedures.**

1. The representations and covenants contained in this Certificate as to Tax Exemption and the Agreement are hereby adopted by the Issuer to be written procedures to ensure compliance, including post-issuance compliance and record retention practices, with the rules applicable to tax-exempt obligations issued under Section 103 of the Code. The Issuer will maintain records that show compliance with the covenants and representations contained in this Certificate and the Agreement, and with the requirements contained in the Code and Regulations related to tax-exempt obligations, while the applicable tax-exempt obligations remain outstanding and for a period of three years after redemption of the tax-exempt obligations.

2. The Issuer designates its Chief Financial Officer to have primary responsibility for monitoring post-issuance tax compliance with the covenants and representations contained in this Certificate and the Agreement and with the requirements contained in the Code and regulations relating to tax-exempt obligations, including requirements relating to the maintenance and retention of records. The Chief Financial Officer may assign and delegate responsibilities as he or she deems necessary or appropriate. These officers will receive the following training with regard to their compliance monitoring responsibilities: consultations with professional advisors, review of written alerts and materials and attendance at professional meetings and seminars.

3. The Issuer will conduct compliance checks for its tax-exempt obligations at least annually. If the Issuer discovers a potential violation of a federal tax requirement, it will promptly take appropriate action, as needed, to maintain the tax-exemption of the applicable debt obligations, including consultation with professional advisors and taking remedial action as described in the Treasury Regulations, and/or other corrective action, such as through the Tax Exempt Bonds Voluntary Closing Agreement Program.

*[Remainder of page intentionally left blank.]*

EXECUTED AND DELIVERED, November 1, 2012.

CITY OF EL PASO, TEXAS

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Chief Financial Officer

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of El Paso, Texas</b>		2 Issuer's employer identification number (EIN) <b>74-6000749</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>2 Civic Center Plaza</b>	Room/suite	5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>El Paso, Texas 79901</b>		7 Date of issue <b>11/01/2012</b>	
8 Name of issue <b>Master Equipment Lease-Purchase Agreement</b>		9 CUSIP number <b>N/A</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>Carmen Arrieta-Candelaria, Chief Financial Officer</b>		10b Telephone number of officer or other employee shown on 10a <b>(915) 541-4435</b>	

## Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ► <u>equipment</u>	18	20,063,362	00
19 If obligations are TANs or RANs, check only box 19a		► <input type="checkbox"/>	
If obligations are BANs, check only box 19b		► <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box		► <input type="checkbox"/>	

## Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	09/01/2022	\$ 20,063,362.00	\$ 20,063,362.00	years	%

## Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22	0	00
23 Issue price of entire issue (enter amount from line 21, column (b))	23	20,063,362	00
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	20,000	00
25 Proceeds used for credit enhancement	25	--	
26 Proceeds allocated to reasonably required reserve or replacement fund	26	--	
27 Proceeds used to currently refund prior issues	27	--	
28 Proceeds used to advance refund prior issues	28	--	
29 Total (add lines 24 through 28)	29	20,000	00
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	2,043,362	00

## Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	►	--- years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	►	--- years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	►	---
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	►	--

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

**Part VI Miscellaneous**

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . . **35**

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- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . . **36a**

--	--
- b** Enter the final maturity date of the GIC ► \_\_\_\_\_
- c** Enter the name of the GIC provider ► \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . . **37**

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- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information:
- b** Enter the date of the master pool obligation ► \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool obligation ► \_\_\_\_\_
- d** Enter the name of the issuer of the master pool obligation ► \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ► ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ► ☐
- 41a** If the issuer has identified a hedge, check here ► ☐ and enter the following information:
- b** Name of hedge provider ► \_\_\_\_\_
- c** Type of hedge ► \_\_\_\_\_
- d** Term of hedge ► \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ► ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ► ☒
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ► ☒
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement . . . . . ► \_\_\_\_\_
- b** Enter the date the official intent was adopted ► \_\_\_\_\_

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.				
	<div style="display: flex; justify-content: space-between;"> <div style="border-bottom: 1px solid black; width: 80%;"></div> <div style="text-align: center;">11/01/2012</div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>Signature of issuer's authorized representative</span> <span>Date</span> </div>	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: center; font-size: small;">Carmen Arrieta-Candelaria, Chief Financial Officer</div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>Type or print name and title</span> </div>			
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Patrick O'Daniel		11/01/2012		PO1064019
	Firm's name ► Fulbright & Jaworski L.L.P.			Firm's EIN ► 74-1201087	
	Firm's address ► 98 San Jacinto Boulevard, Suite 1100, Austin, Texas 78701-4255			Phone no. (512) 536-5264	

Form **8038-G** (Rev. 9-2011)

**EXHIBIT B**  
**ESCROW AGREEMENT**

*(See attachment.)*

Exhibit B  
ESCROW AGREEMENT

This Escrow Agreement, dated as of October\_\_\_\_, 2012 by and among Motorola Solutions, Inc., a Delaware corporation ("Lessor" or the "City"), City of El Paso ("Lessee"), and The Bank of New York Mellon Trust Company, N.A., a national banking association with a corporate trust office in St. Louis, MO, as Escrow Agent (the "Escrow Agent"):

In consideration of the mutual covenants and agreements herein set forth, the parties hereto do hereby covenant and agree as follows:

1. This Escrow Agreement relates to and is hereby made a part of Schedule A#23351, simultaneously executed with this Escrow Agreement, between Lessor and Lessee, to the Master Equipment Lease-Purchase Agreement dated October\_\_\_\_, 2012, between Lessor and Lessee ("Lease").

2. Except as otherwise defined herein, all terms defined in the Lease shall have the same meaning for the purposes of this Escrow Agreement as in the Lease.

3. Lessor, Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall not be deemed to be a party to the Lease and this Escrow Agreement shall be deemed to constitute the entire agreement among Lessor, Lessee, and Escrow Agent.

4. There is hereby established in the custody of Escrow Agent a special trust fund designated Equipment Acquisition Fund (the "Acquisition Fund") to be held and administered by the Escrow Agent in trust for the benefit of Lessor and Lessee in accordance with the Escrow Agreement. Lessor, Lessee and Escrow Agent intend that the Acquisition Fund constitute an escrow account in which Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein for the disbursement of funds by the Escrow Agent therefrom. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in full is not respected in any legal proceeding, the parties hereto intend that Lessor have a security interest in the Acquisition Fund, and such security interest is hereby granted by Lessee to secure payment of all sums due to Lessor under the Lease. For such purpose, Escrow Agent hereby agrees to act as agent for Lessor in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Acquisition Fund, the Lessor's interest therein.

5. (a) Lessor shall deposit \$20,063,362.00 in the Acquisition Fund. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon a written order of a representative of Lessee in Qualified Investments (as hereinafter defined) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Such investments shall be held by the Escrow Agent in the Acquisition Fund.

(b) The parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relative to either the investment of the Acquisition Fund or the purchase, sale, retention or other disposition of any Qualified Investment. The Lessee warrants that the investments directed to be purchased by the Escrow Agent pursuant to this paragraph 5 are Qualified Investments as defined in paragraph 6 of this Escrow Agreement.

(c) Any loss or expense incurred from an investment will be borne by the Acquisition Fund. If the Escrow Agent does not receive written directions to invest the monies held in the Acquisition Fund, its only obligation with respect to the Acquisition Fund shall be to hold it or deposit uninvested without liability for interest or other compensation to either party.

(d) The Escrow Agent is hereby authorized to execute purchases and sales of Qualified Investments through the facilities of its own trading or capital markets operations. The Escrow Agent shall send statements to each of the parties on or before the 15<sup>th</sup> day of each month reflecting activity, including but not limited to earnings, losses and expenses, for the Escrow Account for the preceding month.

6. (a) "Qualified Investments" shall be defined for purposes of this Escrow Agreement as follows, but only to the extent the same are at the time legal for investment of the funds being invested pursuant to the laws of the State of Texas and the City's investment policies.

- (i) Obligations of the State of Texas or of other States which are rated AA or better by Standard & Poors Corporation or Aa or better by Moody's Investors Services, Inc.;
- (ii) Obligations issued by the United States government;
- (iii) Obligations fully insured or guaranteed by the United States government or a United States government agency;
- (iv) Federal Farm Credit System;
- (v) Federal Home Loan Bank System;
- (vi) Federal Intermediate Credit Bank;
- (vii) Prime banker's acceptances;
- (viii) Fully collateralized repurchase agreements provided the City has on file a signed Master Repurchase Agreement, approved by the City Attorney, which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, and conditions for agreement termination and provided the repurchase agreement:
  - a) has a defined termination date;
  - b) is secured by obligations in accordance with Section 11.0 herein;
  - c) requires the securities being purchased by the City to be assigned to the City, held in the City's name, and deposited at the time the investment is made with the City or with a third party selected and approved by the City; and
  - d) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state, and which is rated no less than A or its equivalent by two nationally recognized rating services;
- (ix) Obligations of other political subdivisions of the state of Texas, which are rated AA or better by Standard & Poors Corporation or Aa or better by Moody's Investors Services, Inc.;
- (x) Money market mutual funds that invest according to the requirements of the Lessee's Investment Policy as replaced, supplemented or amended from time to time and which specifically meet the following requirements:
  - (i) are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended;
  - (ii) are operated in accordance with Rule 2A-7 of the Investment Company Act of 1940, 17 C.F.R. 270.2A-7, as amended; and
  - (iii) have received the highest possible rating from at least one nationally recognized statistical rating organization as designated by the United States Securities and Exchange Commission.

The City will restrict investments in eligible obligations described in this section to discount notes and callable or non-callable fixed-rate securities with a fixed principal repayment amount.

(b) Any investment earnings and income on the Acquisition Fund shall become part of the Acquisition Fund, and shall be disbursed in accordance with Section 7 of this Escrow Agreement.

7. Moneys in the Acquisition Fund shall be used to pay for the cost of the acquisition of the Equipment. Payment shall be made from the Acquisition Fund for the cost of acquisition of part or all Equipment upon presentation to the Escrow Agent of one or more properly executed Payment Request and Acceptance Certificates, a form of which is attached hereto as Exhibit A, executed by Lessee, together with an invoice for the cost of the acquisition of the Equipment for which payment is requested and a written approval by Lessor of the Vendor to be paid. Escrow Agent shall not have any right, title or interest in any funds remaining in the Acquisition Fund after Escrow Agent has made payment for all Equipment which have been made pursuant to a Payment Request and Acceptance Certificates and Lessor agrees that any funds remaining in the Acquisition Fund thereafter shall be applied to the next consecutive lease payment(s) due from Lessee.

8. Concerning the Escrow Agent. Notwithstanding any provision contained herein to the contrary, the Escrow Agent, including its officers, directors, employees and agents, shall:



(a) not be liable for any action taken or omitted under this Escrow Agreement so long as it shall have acted in good faith and without fraud, malice or gross negligence; and shall have no responsibility beyond the exercise of ordinary care to inquire into or determine the genuineness, authenticity, or sufficiency of any securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder;

(b) be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind; and have no liability for acting upon any written and/or facsimile and/or e-mail instructions presented by Lessee or Lessor in connection with the Escrow Agreement which the Escrow Agent in good faith, and exercising ordinary care, believes to be genuine.

(c) be entitled to refrain from taking any action contemplated by this Escrow Agreement in the event that it becomes aware of any disagreement between the parties hereto pertaining to disbursements from the Acquisition Fund, execution of an Acceptance Certificate or satisfaction of a Payment Request;

(d) have no responsibility or liability for any diminution in value of any assets held hereunder which may result from any investments or reinvestment made in accordance with any investment or reinvestment instruction from Lessee's representative;

(e) be entitled to compensation for its services hereunder as per Exhibit B, which is attached hereto and made a part hereof, and for reimbursement of its out-of-pocket expenses including, but not by way of limitation, the fees and costs of attorneys or agents which it may find necessary to engage in performance of its duties hereunder, all to be paid by Lessee;

(f) to the extent authorized by Texas law and subject to applicable Texas constitutional limitations, be indemnified and saved harmless by Lessee hereto from all losses, costs, and expenses, including attorney fees which may be incurred by the Escrow Agent as a result of its acceptance of the Acquisition Fund or arising from the performance of its duties hereunder, unless the Escrow Agent shall have been adjudged to have acted in bad faith or to have been grossly negligent, and such indemnification shall survive its resignation or removal of the Escrow Agent, or the termination of this Escrow Agreement until extinguished by any applicable statute of limitations;

(g) in the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets, unless the basis for the dispute is related to the Escrow Agent's failure to perform according to the terms of this Escrow Agreement. The parties further agree to pursue any redress or recourse in connection with such a dispute not related to the Escrow Agent's failure to perform according to the terms of this Escrow Agreement, without making the Escrow Agent a party to same;

(h) only have those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Escrow Agreement. Except for definitions, terms and conditions of other agreements which are referenced in this Escrow Agreement, the Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document between the other parties hereto, in connection herewith. This Escrow Agreement and all attachments and exhibits to this Escrow Agreement, sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other Agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, INDIRECTLY, FOR ANY (i) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE ESCROW AGENT'S FAILURE TO ACT IN ACCORDANCE WITH THE STANDARDS SET FORTH IN THIS AGREEMENT, OR (ii) SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(i) have the right, but not the obligation, to consult with nationally-recognized counsel of its choice and shall not be liable for action taken or omitted to be taken by the Escrow Agent either in accordance with the advice of such counsel;

(j) have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees;  
and

(k) not be required by any provision of this Escrow Agreement to expend or risk its own funds in the performance of its duties if it shall have reasonable grounds for believing that repayment of such funds is not reasonably assured to it.

Any banking association or corporation into which the Escrow Agent (or substantially all of its corporate trust business) may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, except as to notice to Lessee and Lessor of the succession.

9. Tax Matters.

(a) Tax Allocation and Reporting. The parties agree that, for tax reporting purposes, all interest or other income from investment of the Acquisition Fund shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service be reported as having been earned by Lessee, whether or not income was disbursed during a particular year.

(b) Certification of Tax Identification Number. At the time funds are initially deposited into the Acquisition Fund, the parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate W-9 or W-8 and such other forms and documents that the Escrow Agent may request. The parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement.

10. The Acquisition Fund shall terminate upon the occurrence of the earliest of (a) the presentation of a proper Payment Request and Acceptance Certificate with the portion thereof designated "Final Acceptance Certificate" properly executed by Lessee, or (b) the presentation of written notification by the Lessor, or if the Lessor shall have assigned its interest under the Agreement, then the assignees or subassignees of all of Lessor's interest under the Lease or an Agent on their behalf, that an Event of Default has occurred or that Lessee has terminated the Lease pursuant to **Section 5 or Section 19** of the Lease, or (c) the third anniversary of the date of this Agreement. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall be used to pay the next scheduled Lease Payment or Lease Payments when due until exhausted. Upon termination as described in clause (b) or (c) of this paragraph, any amount remaining in the Acquisition Fund shall immediately be paid to Lessor or, pro rata, to any assignees or subassignees of Lessor.

11. The Escrow Agent may at any time resign by giving at least 30 days written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by the Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee, and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trust, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent. If a successor escrow agent hasn't been appointed within the 30 days above, the Escrow Agent may, at the Lessee's expense, petition a court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

12. The Escrow Agent incurs no liability to make any disbursements pursuant to the Escrow Agreement except from funds held or received in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Equipment or as to the performance of any obligations of Lessor or Lessee.

13. Notices. Any notice, consent or request to be given in connection with any of the terms or provisions of this Escrow Agreement shall be in writing and be given in person, by facsimile transmission or courier delivery service or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by facsimile with receipt confirmed by telephone or by courier delivery service, or (c) four business days after being deposited in the United States mail, with proper postage prepaid for first-class registered or certified mail.

Notices shall be addressed as follows:

if to Lessor: Motorola Credit Corp.  
Attn: Director of Customer Financing  
1303 E. Algonquin Road  
Schaumburg, IL 60196

if to Lessee: City Chief Financial Officer  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

if to the Escrow Agent: The Bank of New York Mellon Trust Company, N.A.  
911 Washington Ave.  
St. Louis, MO 63101

14. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. This Escrow Agreement may not be amended except by a written instrument executed by Lessor, Lessee and the Escrow Agent.

16. Governing Law, Counterparts. This Agreement shall be construed in accordance with the laws of the State of Texas. It may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

The remainder of this page is intentionally left blank and is followed by a signature page.

IN WITNESS WHEREOF, Lessor, Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

MOTOROLA SOLUTIONS, INC. (Lessor)

CITY OF EL PASO (Lessee)

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title;

The Bank of New York Mellon Trust Company, N.A. (Escrow Agent)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

Escrow Agreement  
Payment Request and Acceptance Certificate

To: The Bank of New York Mellon Trust Company, N.A.

Attn: James Agnew

911 Washington Ave.

St. Louis, MO

Phone Number: (314) 613.8203

Fax Number: (314) 613.8286

Email: jagnew@bankofny.com

and

Motorola Solutions, Inc.

1301 E. Algonquin Road

Mail Drop SH5-B

Schaumburg, IL 60196

RE: Schedule A #23351 dated October\_\_\_\_, 2012 to Master Equipment Lease-Purchase Agreement #23351 dated October\_\_\_\_, 2012

The Escrow Agent is hereby requested to pay from the Acquisition Fund to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition of the equipment and/or services described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment and/or services and has not formed the basis of any prior request for payment. The equipment and/or services described below are part or all of the "Equipment and Services" listed in the Schedule A #23351 dated October\_\_\_\_, 2012 to the Master Equipment Lease-Purchase Agreement #23351 dated October\_\_\_\_, 2012 (the "Agreement").

<u>Quantity</u>	<u>Serial Number/Description:</u>	<u>Amount:</u>
-----------------	-----------------------------------	----------------

Payee:

Payee's Federal ID Number: \_\_\_\_\_

Lessee hereby certifies and represents to and agrees with Lessor as follows:

- (1) The equipment and/or services described above have been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of said equipment as it deems necessary and appropriate and hereby acknowledges that it accepts said equipment and/or services for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 14 of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

Dated: \_\_\_\_\_

City of El Paso  
LESSEE

By \_\_\_\_\_

Title \_\_\_\_\_

Approved:

Motorola Solutions, Inc.  
LESSOR

By \_\_\_\_\_

Title \_\_\_\_\_

Exhibit A (Continued)  
Escrow Agreement  
Final Acceptance Certificate

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**FINAL ACCEPTANCE CERTIFICATE**

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(THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL EQUIPMENT HAS BEEN ACCEPTED)

The undersigned hereby certifies that the equipment described above, together with the equipment described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with the Lessor pursuant to the Agreement, constitutes all of the Equipment and Services subject to the Agreement.

Dated: \_\_\_\_\_

LESSEE (City of El Paso)

By \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit B**  
**Escrow Agreement**  
**(Escrow Agent Fee Schedule)**

The Escrow Agent shall be entitled to fees for its ordinary services as follows:

**\$25.00 per trade, plus an annual fee of \$1,000.00 due upon receipt of the Final Acceptance Certificate signed by Lessor/Lessee. These fees are payable by Lessee and may be paid from interest earnings.**

**CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT**

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with The Bank of New York Mellon, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

## City of El Paso (Schedule B- sample)

Compound Period .....: Annual

Nominal Annual Rate ... : 2.260 %  
 Effective Annual Rate .. : 2.260 %  
 Periodic Rate ..... : 2.2600 %  
 Daily Rate ..... : 0.00619 %

## CASH FLOW DATA

Event	Start Date	Amount	Number	Period	End Date
1 Loan	11/01/2012	20,063,362.00	1		
2 Payment	09/01/2013	2,255,714.49	10	Annual	09/01/2022

## AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 11/01/2012				20,063,362.00
2012 Totals	0.00	0.00	0.00	
1 09/01/2013	2,255,714.49	377,652.94	1,878,061.55	18,185,300.45
2013 Totals	2,255,714.49	377,652.94	1,878,061.55	
2 09/01/2014	2,255,714.49	410,987.79	1,844,726.70	16,340,573.75
2014 Totals	2,255,714.49	410,987.79	1,844,726.70	
3 09/01/2015	2,255,714.49	369,296.97	1,886,417.52	14,454,156.23
2015 Totals	2,255,714.49	369,296.97	1,886,417.52	
4 09/01/2016	2,255,714.49	326,663.93	1,929,050.56	12,525,105.67
2016 Totals	2,255,714.49	326,663.93	1,929,050.56	
5 09/01/2017	2,255,714.49	283,067.39	1,972,647.10	10,552,458.57
2017 Totals	2,255,714.49	283,067.39	1,972,647.10	
6 09/01/2018	2,255,714.49	238,485.56	2,017,228.93	8,535,229.64
2018 Totals	2,255,714.49	238,485.56	2,017,228.93	
7 09/01/2019	2,255,714.49	192,896.19	2,062,818.30	6,472,411.34
2019 Totals	2,255,714.49	192,896.19	2,062,818.30	
8 09/01/2020	2,255,714.49	146,276.50	2,109,437.99	4,362,973.35
2020 Totals	2,255,714.49	146,276.50	2,109,437.99	
9 09/01/2021	2,255,714.49	98,603.20	2,157,111.29	2,205,862.06
2021 Totals	2,255,714.49	98,603.20	2,157,111.29	
10 09/01/2022	2,255,714.49	49,852.43	2,205,862.06	0.00
2022 Totals	2,255,714.49	49,852.43	2,205,862.06	



## City of El Paso (Schedule B- sample)

Date	Payment	Interest	Principal	Balance
Grand Totals	22,557,144.90	2,493,782.90	20,063,362.00	